

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 208

Case No. : C. W. P.No. 1166 of 2012

Date of Decision : May 14, 2015

Mam Chand Petitioner

Vs.

Khadi and Village Industries
Commission and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. S. K. Hooda, Advocate
for the petitioner.

Mr. N. S. Jagdeva, Advocate
for respondents no. 1 and 2.

Mr. Akshay Goel, Advocate
for respondents no. 3 and 4.

Mr. Vishal Goel, Advocate
for respondent no. 5.

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DEEPAK SIBAL, J. :

Through the present petition, the petitioner seeks a direction to

respondents no. 2 to 4 for payment of his salary from January 2008 till date.

As per written statement filed on behalf of the contesting respondents, which are respondents no. 3 and 4, it has been pointed out that the petitioner remained absent from duty w.e.f. 30.04.2007 to 15.12.2009. It is further stated that he again joined duty on 16.12.2009, worked up to 30.04.2011 and thereafter, remained unauthorizedly absent and never joined duty. It is still further stated that the petitioner was not entitled for salary for his unauthorized absence from duty, an issue which had been proved against him through an inquiry conducted by a three member Committee constituted by respondents no. 3 and 4.

The record reveals that in the inquiry undertaken by the three-member Committee, the petitioner was never associated. In fact, the petitioner was never even served with any notice, informing him about any such inquiry. The action of respondents no. 3 and 4 is thus clearly in violation of principles of natural justice.

In view of the above dispute on facts, learned counsel appearing on behalf of the petitioner states that the salary of the petitioner from 16.12.2009 till 30.04.2011, the period for which respondents no. 3 and 4 admit that the petitioner had served them, be released to him. He further prays that for the rest of the period, he may be granted liberty to take recourse to alternate remedies, that may be available to him, in accordance with law.

For the prayer with regard to release of salary for the period from 16.12.2009 till 30.04.2011, learned counsel for the petitioner relied on a judgment of this Court passed in **C. W. P. No. 3869 of 2008** titled **Sh. Radhey Sham vs. Khadi and Village Industries Commission, Gramodaya and others**, decided on 01.02.2012, in which it has been held as under :-

“1. The writ petition seeks for mandamus against the respondents for grant of salary. Although the Khadi Village Industries Commission and the Khadi and Village Industries Board have also been made parties, I would find that it is the 3rd respondent, who is the employer for the petitioner. Learned counsel for respondent No.3 denies that the 3rd respondent is the employer but it is falsified by the order of appointment issued by the 3rd respondent to the petitioner. It is not denied that the petitioner has not been paid salary from December, 2004. On the other hand, there has been an observation of this Court on 26.05.2009 where during the course of

hearing, the Director appearing for the Commission had informed that the subsidies have been withheld by the Punjab Government and he has pleaded on behalf of the 3rd respondent that salaries could not be paid on account of such withdrawal of subsidies. The Khadi Commission, which gave subsidies for enabling the consumers to purchase the products at a cheaper price or to incentivize the proper functioning of the Khadi Board, cannot be made answerable for the liabilities arising in a contract of employment, which the 3rd respondent has entered with any person as an employee.

2. The 3rd respondent has taken a contention that it is not an instrumentality of State but a society registered under the Societies Registration Act and writ petition could not be filed. Although I would find that a writ remedy was not appropriate, having regard to the special facts brought

*through the pleadings of the respective parties that the petitioner has been employed by the 3rd respondent but still not paid salary, I would find this to be an instance where a right to life through a living wage is denied by the act of the 3rd respondent, who has been so rude and heartless to deny the employment status falsely. In **Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani: (1989) 2 SCC 691**, the Hon'ble Supreme Court held while making a private trust running a college due for salaries that any person or authority performing public duty and owing positive obligation to the affected party is amenable to the affected party. The judgment is squarely applicable.*

3. *The 3rd respondent is directed to release the salary to the petitioner and it shall take appropriate steps to secure the resources in whatever ways legally*

permissible and pay to the petitioner entire salary from December, 2004 as well as the terminal benefits that have accrued to him. The same shall be paid with interest @6% from the respective dates when it fell due till the date of payment. The petitioner is at liberty to approach this Court to complain of disobedience if the amounts are not paid within 8 weeks from the date of receipt of copy of this order. No relief is granted to the petitioner as regards other respondents.

4. The writ petition is allowed on the above terms.”

In view of the above, respondents no. 3 and 4 are directed to release the salary of the petitioner for the period from 16.12.2009 till 30.04.2011, along with interest @ 6% per annum, from the date the salary fell due till the date of payment.

For the remaining period, for which the petitioner claims salary, he is granted liberty to avail any alternate remedy, that may be available to him, in accordance with law.

Respondents no. 3 and 4 are also given liberty to proceed against the petitioner for any alleged misconduct that may have been

committed by him, by proceeding against him as per law.

The writ petition stands disposed of in the above terms.

(DEEPAK SIBAL)
JUDGE

May 14, 2015
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